

COMMERCE AND ECONOMIC GROWTH COMMISSION

Office of Business Services

TREASURY - GENERAL

DIVISION OF PURCHASE AND PROPERTY

Goods and Services Contracts for Small Businesses,
Minority Businesses and Female Businesses

Jointly Proposed Readoption With Amendments: N.J.A.C.

12A:10 and 17:13

Authorized by: William D. Watley, Chief Executive
Officer and Secretary, New Jersey Commerce and
Economic Growth Commission, and Robert L. Smartt,
Deputy State Treasurer, Department of the Treasury

Authority: N.J.S.A. 52:18A-30(d), 52:25-1 et seq.,
52:34-6 et seq., 52:32-17 et seq., 52:27H-6(f), 52:34-
12, 10:5-36(k) and (o), 52:34-13, 52:27C-71 (q);
52:27C-73(a), (f) and (h); 52:27H-21.24 and 52:14B-1
et seq. and Executive Order No. 84(1993)

Calendar Reference: See summary below for explanation
of the exception to the calendar requirement.

Proposal Number: PRN 2003-151.

Submit written comments jointly by July 4 ,2003 to:

Joseph T. Grossi, Director
Office of Business Services
New Jersey Commerce and Economic Growth
Commission

PO Box 820
Trenton, NJ 08625-0820

and

Hope Blackburn, Director
Division of Purchase and Property
Department of the Treasury
PO Box 039
Trenton, NJ 08625-0039

The agency proposal follows:

Summary

Chapter 10, Small Business Set-Aside, was adopted jointly with the Department of the Treasury as R.1984, d.421, effective October 1, 1984. See: 16 N.J.R. 1958(a), 16 N.J.R. 2683(a).

Chapter 10, Small Business Set-Aside, was repealed and Chapter 10, "Contracts for Small Businesses, Female Businesses and Minority Businesses", was adopted jointly with the Department of the Treasury as R. 1987 d.143, effective March 16, 1987. See: 18 N.J.R. 2306(a), 19 N.J.R. 457(b).

Chapter 10, Contracts for Small Businesses, Female Businesses and Minority Businesses, was readopted and Subchapter 2, "Minority and Female Subcontractor Participation in State Construction Contracts " was adopted as Emergency R.1989 d.481, effective August 14, 1989 (expired October 13, 1989). A concurrent readoption and adopted concurrent new rules were filed on October 13, 1989 as R.1989 d.554, See: 21 N.J.R. 2810(a), 21 N.J.R. 3545(b).

Subchapter 1, formerly "Goods and Services Contracts for Small Businesses, Urban Development Enterprises and Micro Businesses, was re-designated as "Purpose, Scope and Definitions", Subchapter 2, formerly "Minority and Female Subcontractor Participation in State Construction Contracts", was re-designated as "Set-Aside Eligibility Requirements for Small Businesses, Minority Businesses and Female Businesses" and Subchapters 3, 4 and 5 were adopted by R.1994 d.309, effective January 3, 1995. See: 25 N.J.R. 4889(a), 27 N.J.R. 129(a).

The expiration date of Chapter 10, Goods and Services Contracts for Small Businesses, Minority Businesses and Female Businesses was extended by gubernatorial directive from October 13, 1994 to March 31, 1995. See: 26 N.J.R. 4411(a).

Pursuant to Executive Order No. 66 (1978), Chapter 10, Goods and Services Contracts for Small Businesses, Minority Businesses and Female Businesses, was readopted as R.1995 d.224, effective March 30, 1995. See: 27 N.J.R. 52(a), 27 N.J.R. 1811(b).

Pursuant to Executive Order No. 66 (1978), Chapter 10, Goods and Services Contracts for Small Businesses, Minority Businesses and Female Businesses, was readopted as R.1998 d.199, effective March 26, 1998. See: Source and Effective Date.

The New Jersey Commerce & Economic Growth Commission and the New Jersey Department of the Treasury have reviewed these rules, including the following amendments, and have determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. The proposed amendments are technical in nature in that they replace references to the New Jersey Department of Commerce and Economic Development and the position of Commissioner with references to the New Jersey Commerce and Economic Growth Commission (Commerce Commission) and the position of Chief Executive Officer and Secretary (Secretary). The Department of Commerce and Economic Development, abolished by statute in 1998, was replaced by the Commerce and Economic Growth Commission. These administrative rules are promulgated pursuant to the Commission's authority under N.J.S.A. 52:27C-71 (q); -52:27C-73(a),

(f) and (h); N.J.S.A. 52:27H-21.24 and -52:14B-1 et seq. The proposed technical amendments in N.J.A.C. 10-1.1(a), (c); 1.2(a); 2.1(d); 2.2(a),(b),(c); 3.1(a),(b)1-3; 3.2(a),(b); 3.3(a)1-2, (b)1-5; 4.1(c)2, (d)1; 4.2(a)2; 5.1 (a), (a)2i, (b); 5.2(a),(b),(c) and 5.3 delete the word "Commissioner" and replace it with "Chief Executive Officer and Secretary" and delete the words "Department of Commerce and Economic Development" and replace it with "Commerce and Economic Growth Commission" to accurately reflect the statutory change from the Department of Commerce and Economic Development to the Commerce and Economic Growth Commission. Section 1.2(a) contains a new, defined term, "Invitation for Bids", that replaces the deleted term, "Request for Proposals". Also within Section 1.2(a), the definition of the term, "Multi-source contract", is made more general by reference to the governing statute to accommodate anticipated adjustments to that statute, and the definition of the term, "Set-aside contract", is modified to correct a grammatical flaw and to emphasize that the term is defined only for the purpose of these rules. The lists of agencies provided in the definition of "State contracting

agency" in section 1.2(a) are updated to reflect the current agency/institution names and re-positioned to maintain alphabetical order. Section 2.3 is amended to correctly reference the procedures for administrative hearings upon the denial of any contract from N.J.A.C 17:12-3.1 through 3.6 to N.J.A.C 17:12-3.1 through 3.4. Language is modified in 3.1(a) to reflect the Commerce Commission's actual, ongoing registration and certification programs, and present a proposed change to require small businesses to be registered, and minority-owned and female-owned businesses to be certified as of the date the bids or bid proposals are due, instead of 60 days after the award of the contract, to meet statutory requirements for awards of contracts to be made to responsible bidders, i.e., with respect to the set-aside programs, bidders who are, at the time of bidding, approved as small businesses, minority-owned businesses or female-owned businesses by the Commerce Commission. Our analysis and review failed to demonstrate any justification for the retention of this provision in the regulation. Section 3.1(b)2 contains a change to reflect a transfer of responsibility for certification of corporations from the Department of State to the

Department of the Treasury. Language was added in 3.1(b)1 to clarify the annual registration fee of \$100.00 for small minority and women businesses and the minority and female business certification fee of \$75.00 pursuant to the period indicated in N.J.A.C. 12A:11-1.11. Section 4.1(c)2 is modified to account for invitations for bids that contain a portion or portions set aside for exclusive bidding by small businesses, minority businesses or female businesses. Language in section 4.2(a)2 is modified to have a bidder seeking contact information for minority business or female business subcontractors contact the Commerce Commission as the State entity with access to the most current and complete lists of approved small, minority and female businesses. The word "entirely" is deleted in section 5.1(a)lvii because it is aberrant and redundant to the word "entirety", which precedes it. There is no intention by deleting "entirely" to change the meaning or application of section 5.1(a)(1)(vii). The Commerce Commission and Department of the Treasury are allowing a 60 day comment period for this notice of proposal, therefore, the proposal falls under the N.J.A.C 1:30-3.3 (a)5 "exception to the requirement for calendar notice."

These rules apply to every agency and department of the State of New Jersey that is authorized to award goods and services contracts. These rules require that each State contracting agency make a good faith effort to award at least 15 percent of its contracts and/or subcontracts to eligible small businesses, at least 7 percent of its contracts and/or subcontracts to eligible minority businesses and at least 3 percent of its contracts and/or subcontracts to eligible female-owned businesses. These proposed rules also set forth the New Jersey Commerce and Economic Growth Commission's requirements and refined procedures for small, minority and female businesses to establish eligibility to compete for State contracting and subcontracting opportunities, including compulsory formal certification as a minority or female business within 60 days following award of a State or subcontract.

These rules clarify the set-aside program requirements and procedures. The terms restrict set-aside eligibility to only those minority groups for which there exists a compelling State interest in

remedial action as documented by the 1993 findings of the Governor's Study Commission on Discrimination in Public Works Procurement and Construction Contracts. These rules meet the strict scrutiny standard as articulated in the U.S. Supreme Court's decision in City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989), which held that any race or gender based policy that is designed to remedy discrimination, in order to pass constitutional muster, must be narrowly tailored and justified by a compelling state interest.

The Agencies have reviewed the rules and determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated.

Following is a summary of the provisions of each subchapter of the chapter proposed for readoption.

Subchapter 1 contains provisions regarding purpose and scope and defines terms used in this chapter as well as the departments, colleges, authorities and commissions that must fulfill the set-aside goal requirements.

Subchapter 2 contains set-aside eligibility requirements for small businesses, minority businesses and female businesses. It also contains the obligation of these businesses to provide information and details penalties for failure to provide complete and accurate information to the state.

Subchapter 3 details certification and registration procedures for small businesses and minority and female businesses, as well as procedures for challenging registered small businesses or certified minority or female businesses.

Subchapter 4 details the set-aside program goals and procedures that State agencies must follow. N.J.A.C. 17:13-4.1 (12A:10-4.1) clarifies that percentages shall be based on total dollar value of set-aside contracts and subcontracts thereunder and that dollar values shall be measured against the total dollar value of all publicly advertised contracts. The subchapter also makes clear the penalties in the event of noncompliance. Finally, this subchapter states that, where applicable, State contracting

agencies may follow Federal law or regulations regarding procurement procedures.

Subchapter 5 describes the specific planning, reporting and review requirements of the State contracting agencies. In general, said agencies will submit a set-aside contracting plan for each fiscal year and quarterly progress updates to the New Jersey Commerce and Economic Growth Commission's Office of Business Services. It also makes clear in N.J.A.C. 17:13-5.2 (12A:10-5.2) that State contracting agencies, in determining compliance with the set-aside goals for the three categories, shall count only those contracts awarded as a result of set-aside designations and only for the categories designated. For example, if an agency sets aside a contract for small businesses and the contract is awarded to a small business owned by a minority woman, that contract can be counted only as a small business award and not as a minority business or a female business award. If a registered small business, minority business or female business is awarded a contract that was not set aside, that contract cannot be counted as a set-aside award but shall be counted toward

attainment of the agency's overall goal.

This subchapter also describes the role of the New Jersey Commerce and Economic Growth Commission and the reports/data required from each State contracting agency to the Commission.

Social Impact

These rules are based on the disparity findings as set forth in the Final Report of the Governor's Study Commission on Discrimination in Public Works Procurement and Construction Contracts issued on February 22, 1993 and Executive Order No. 84 (March 5, 1993) which established a narrowly tailored, remedial set-aside program to address documented discrimination. The results of the disparity study provides the basis for establishing a narrowly tailored remedial set-aside program designed to properly address documented discrimination in this State.

These rules are expected to have a continuing positive social impact on the affected businesses and on the State as a whole because they will increase

access to and opportunities for small business and minority and female businesses, whether they are prime contractors or subcontractors. The rules also are expected to address the need to establish a system that tracks actual work performed and dollars paid to subcontractors through public contracting in this State.

Economic Impact

The rules in this proposed readoption are expected to contribute to the long-term economic growth of the State of New Jersey and to the health and vitality of the minority business and female business communities which have historically been underutilized in the public and private sectors. The growth potential of the businesses taking part in the set-aside program should be enhanced, creating job opportunities and generating additional tax revenue.

To participate in the program, small minority and female businesses are required to pay an annual registration fee of \$100.00. In addition to annual registration, minority and female businesses must be certified pursuant to N.J.S.A. 52:27H-19 et. seq. and

a \$75.00 fee is required for the period indicated in
N.J.A.C. 12A:11-1.11.

Federal Standards Statement

There are no Federal requirements applicable to the subject matter of the rules proposed for readoption. The rules are authorized by N.J.S.A. 52:18A - 30(d), 52:25, 52:34-6 et seq., 52:32-17 et seq., 52:27H-6(f), 52:34-12, 10:5-36(k) and (o), 52:34-13 and Executive Order No. 84(1993).

Job Impact

These rules establish procedures for the required participation of every agency and department of the State of New Jersey that is authorized to award goods and services contracts. These rules, which are proposed for readoption, will result in the retention and creation of jobs. The retention and creation of jobs will occur as a result of small businesses, female-owned and minority-owned businesses being awarded State goods and services contracts, which will then allow them to grow their businesses. This growth of their businesses will permit them to maintain and expand their employment. The anticipated

participation of, and/or award of contracts to, small businesses, minority-owned businesses and female-owned businesses will have no greater effect on those businesses not eligible for set-aside contracts.

Agriculture Industry Impact

The Commission anticipates that the proposed amendments will have no impact on the agriculture industry.

Regulatory Flexibility Analysis

The rules proposed for readoption establish additional paperwork requirements for firms bidding on State contracts, many of which are considered small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. For specified contracts, bidders will be required to submit a minimum of two additional forms listing small, minority and female companies being proposed as subcontractors. Those firms failing to meet the State's goals or targets will be required to document their outreach efforts, detailing their solicitation

of price quotes from small, minority or female subcontractors and/or suppliers. Prime contractors will also have to submit additional forms listing actual payments made to small, minority or female contractors. Small, minority and female businesses seeking to establish eligibility for participation in the set-aside program will be required to complete a simple registration form initially. Small, minority and female businesses seeking to establish eligibility for participation in the set-aside program will be required, pursuant to the proposed changes in N.J.A.C. 12A:10-3.1(a), to be registered or certified, as applicable, prior to the date the bids or bid proposals are due to be received by the State contracting agency.

It is anticipated that the additional time and cost of the paperwork required by non-set-aside bidders will be minimal and that the public benefits of this program will outweigh the cost. The time and cost associated with the certification process may be somewhat more than minimal for some minority and female businesses. However, there is a need to ensure that only those businesses owned by groups for which a

factual finding of discrimination has been documented benefit from the set-aside program. This need outweighs those costs. Therefore, no differing standards based on business size are offered.

Smart Growth Impact

Any impact with respect to the achievement of smart growth and the implementation of the State Development and Redevelopment Plan would be a result of the participation of Small Businesses, Female Businesses and Minority Businesses on projects within designated smart growth areas.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 17:13 and 12A:10.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

12A:10-1.1 (17:13-1.1) Purpose and scope

(a) The rules in this chapter are jointly promulgated

by the [Department of Commerce and Economic Development] Commerce and Economic Growth Commission (hereinafter, "[Department of Commerce] Commerce Commission"), and the Department of the Treasury, to implement N.J.S.A. 52:32-17 et seq., and Executive Order No. 84, dated March 5, 1993, to establish a set-aside program that requires State agencies with contracting authority to make a good faith effort to award 15 percent of State contracts to eligible small businesses, seven percent of State contracts to eligible minority businesses and three percent of State contracts to eligible female businesses. These percentage goals are overall program goals for each State contracting agency. State contracting agencies are expected to apply their business judgment when establishing set-aside subcontracting goals for individual contracts.

(b) (No Change.)

(c) Applications and questions regarding eligibility as a small business, minority business and/or female business should be addressed to:

[Department of Commerce and Economic Development]

Commerce and Economic Growth Commission

Set-Aside and Certification Office

20 West State Street

PO Box 820

Trenton, New Jersey 08625-0820

Questions concerning the award of contracts under these rules should be directed to the State contracting agency issuing the particular contract.

12A:10-1.2 (17:13-1.2) Definitions

(a) The words and terms used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Certification" means the process whereby a minority-owned business or female-owned business is authenticated for participation in State programs requiring such certification, as judged and determined by the **Commerce Commission's** Set-Aside and Certification Office [of the Department of Commerce and Economic Development].

"[Commissioner] Secretary " means the [Commissioner] Chief Executive Officer and Secretary of the [Department of Commerce and Economic Development] Commerce Commission or his or her designee.

"Invitation for Bids" or "IFB" means the document issued by a State contracting agency to initiate an advertised bidding and contract award process, and includes Requests for Proposals (RFPs) and Requests for Quotations (RFQs). The IFB establishes the contract's terms and conditions, the product/or service specifications, and the bidding eligibility to businesses approved as small business, minority business or female business entities.

"Multi-source contract" means a term contract awarded by the Division of Purchase and Property wherein more than one vendor is awarded a contract in accordance with the provisions of N.J.S.A. 52:34-12.1. [The term is applicable in two situations, when defined in conjunction with the Division of Purchase and Property (see N.J.S.A. 52:34-12.1)

1. Where the volume of business is so large or the

geographical distances are so great that more than one vendor is necessary to serve the State's needs; or

2. Where the differences between manufacturers' versions of a product are so significant that it is necessary to have a contract with a vendor of each product.]

["Request for Proposals" or "RFP" means the document issued by a State contracting agency to initiate an advertising bidding and contract award process. The RFP establishes the contract's basic terms and conditions, the product and/or service specifications, and the bidding requirements which may include a set-aside provision that restricts bidding eligibility to businesses qualified as small business, minority business or female business.]

"Set-aside contract", **for the purposes of construing and applying these regulations only,** means a contract, or a portion of a contract when that portion is so allocated, specifically designated by a contracting agency as exclusively [being] available for award to

either a small business, minority business or female business.

"State contracting agency" means any board, commission, committee, authority, division, department or agency of the State which possesses the legal authority to enter into or award contracts for goods and services[which include],including, but not limited to, the following entities except where expressly inconsistent with New Jersey or Federal statutory law:

1. DEPARTMENTS:

Agriculture

Banking and Insurance

Personnel

[Commerce, Energy and Economic Development]

Community Affairs

Corrections

Education

Environmental Protection

Health and Senior Services

[Higher Education]

Human Services

[Insurance]

Labor

Law and Public Safety

Military and Veterans Affairs

[Public Advocate]

State

Transportation

Treasury

2. COLLEGES:

College of New Jersey

[Glassboro State College]

[Jersey City State College]

Kean [College of New Jersey] University

Montclair State [College] University

New Jersey City University

New Jersey Institute of Technology

Ramapo College of New Jersey

Richard Stockton [State] College of New Jersey

Rowan University

Rutgers the State University

Thomas [E]A. Edison State College

[Trenton State College]

University of Medicine and Dentistry of New

Jersey

William Paterson [College] University of New
Jersey

3. (No Change.)

4. COMMISSIONS:

Beach Erosion Commission

Casino Control Commission

County and Municipal Government Study

Commission

Commerce and Economic Growth Commission

Election Law Enforcement Commission

Executive Commission on Ethical Standards

Hackensack Meadowlands Development Commission

N.J. Commission on Capital Budgeting &

Planning

N.J. Racing Commission

North Jersey Water Supply Commission

Passaic Valley Sewer Commission

Pinelands Commission

State Commission of Investigation

12A:10-2.1 (17:13-2.1) Standards of eligibility for
small businesses, minority businesses and female
businesses

(a)-(c) (No Change.)

(d) Eligibility is formalized by the [Department of Commerce's] Commerce Commission's certification and/or registration and approval processes.

12A:10-2.2 (17:13-2.2) Obligation to provide information and penalties for failure to provide complete and accurate information

(a) Applicants under these rules shall accurately and honestly supply all information required by the [Department of Commerce] Commerce Commission.

(b) When a business has been approved as an eligible small business, minority business or female business on the basis of false information knowingly supplied by the business and the business has been awarded a State contract or a subcontract thereto, the [Commissioner] Secretary of the [Department of Commerce] Commerce Commission, after notice and

opportunity for a contested case hearing pursuant to
N.J.S.A. 52:14B-10 and N.J.A.C. 1:1, shall:

1-3 (No Change.)

(c) Any business approved by the [Department of
Commerce] Commerce Commission as a small business,
minority business and/or female business shall
immediately apprise the [Department] Commerce
Commission of any circumstances which might affect the
eligibility of the business under these rules.

(d) (No Change.)

12A:10-2.3 (17:13-2.3) Right to hearing upon denial of
contract

A bidder or contractor that is denied any contract or
the right to bid on any contract because of a
determination that it failed to make a good faith
effort to solicit and award subcontracts to eligible
minority and female businesses shall be entitled to an
administrative hearing as provided by N.J.A.C. 17:12-
3.1 through [3.6] 3.4.

12A:10-3.1 (17:13-3.1) Certification and registration procedures for small businesses, minority businesses and female businesses

(a) Certification procedures established by the [Department of Commerce] Commerce Commission are as set forth in N.J.A.C. 12A:11. [Businesses awarded contracts or subcontracts based on their eligibility as registered minority or female businesses must file an application for certification with the Department of Commerce no later than 60 calendar days after the award of the contract.] Businesses seeking awards of competitively bid contracts, or subcontracts thereto, based upon their eligibility as registered small businesses or upon their certification as minority or female businesses, must be registered as small businesses or certified as minority or female businesses by the Commerce Commission on or before the date the bids or bid proposals are required to be submitted to the State contracting agency. In accordance with N.J.S.A. 52:27H-21.18, small businesses are not required to be certified.

(b) Registration procedures established by the [Department of Commerce] Commerce Commission are as follows:

1. Any business which seeks to register as a small business, minority business and/or female business must apply to the [Department of Commerce] Commerce Commission and pay [any applicable fees] a \$100 annual registration fee. In addition to the \$100 registration fee, any business applying for certification must pay a \$75 application fee pursuant to the period indicated in N.J.A.C 12A:11-1.11. For these purposes, the [Department of Commerce] Commerce Commission shall prepare a Vendor Registration Form. This form shall be available from the [Department of Commerce] Commerce Commission and the State contracting agencies.

2. As part of its application to the [Department of Commerce] Commerce Commission, a business shall reasonably document its principal place of business and independent status, and, as appropriate, the number of its employees. Where available, this

documentation should include appropriate forms or reports otherwise submitted to or issued by State and Federal agencies, such as employee or affirmative action reports filed with the New Jersey Department of Labor or certificates of incorporation issued by the New Jersey Department of [State] the Treasury.

i. (No Change.)

ii. (No Change.)

3. When an application for registration [as a small, minority or female business] or certification is approved by the [Department of Commerce] Commerce Commission, the [Department] Commerce Commission will issue the newly approved [registered] business an approval notice and add it to the [Department's] Commerce Commission's approved small, minority or female vendor lists, as appropriate.

4. (No Change.)

12A:10-3.2 (17:13-3.2) Time for application to register as a small business[,] or for certification as a minority business or female business

(a) A business may apply to the [Department of Commerce] Commerce Commission at any time to be registered as a small business, or to be certified as a minority business or female business and to be placed on the appropriate vendor list.

(b) If a business is to be [considered as a small, minority or female contractor or subcontractor] eligible to bid on a specific set-aside contract for the purposes of these rules, it must [apply to the Department of Commerce for the purposes of registration no later than one day prior to the deadline for bids being received and opened by the State contracting agency.] be registered as a small business or certified as a minority business or female business by the Commerce Commission on the date the bids or bid proposals are received and opened by the State contracting agency.

12A:10-3.3 (17:13-3.3) Procedures for challenging a business registered as a small business[,] or certified as a minority business or female business

(a) (No Change.)

1. A registration or certification challenge shall be made in writing to the Set-Aside and Certification Office of the [Department of Commerce] Commerce Commission, setting forth the factual basis for the challenge. The [Department] Commerce Commission shall provide a copy of the challenge and a notice granting the opportunity for a hearing to the challenged business. Where a particular contract is at issue, the [Department] Commerce Commission shall also provide a copy of the challenge to the contracting agency.

2. A registration or certification challenge to the [Department of Commerce] Commerce Commission may concern only the qualification of a business under these rules as a registered small business[,] or a certified minority business or female business. Any challenge to a business's qualifications to perform a contract shall be referred to the appropriate State contracting agency.

(b) When the [Department of Commerce] Commerce Commission receives a challenge, upon request of the business whose registration or certification is at issue, the [Department] Commerce Commission shall conduct a hearing on the matter as follows:

1. The [Department] Commerce Commission shall notify all interested parties of the time and place of the hearing, and of the right to attend and be represented at the hearing.

2. The burden of proof lies with the challenger. However, the [Department] Commerce Commission may use its own resources to ascertain the validity of a challenge and the status of a business.

3. The hearing will be conducted by the designee of the [Commissioner] Secretary of the [Department of Commerce] Commerce Commission. This designee will issue a written report to the [Commissioner] Secretary within four working days following the close of the hearing.

4. At the discretion of the [Commissioner's]

Secretary's designee, participants at the hearing may be permitted to file written exceptions to the hearing officer's report no later than two working days from the issuance of the report.

5. Thereafter, the [Commissioner] **Secretary** shall issue a final decision on the challenge and notify the parties by certified letter.

6. (No Change.)

12A:10-4.1 (17:13-4.1) Set-aside program goals and procedures

(a)-(b) (No Change.)

(c) (No Change.)

1. (No Change.)

2. Invitations for bids, **or a portion thereof,** shall be [confined to either] **specifically set aside for** small businesses, minority businesses or female businesses, and bids from other bidders shall be rejected.

3-4 (No Change.)

(d) When the State contracting agency has made a

determination that a contract is suitable for subcontract set-aside designation, the following provisions apply:

1. The public advertisement shall include the address and telephone number of the New Jersey [Department of Commerce's] Commerce Commission's Set-Aside and Certification Office and a notice to prospective bidders that set-aside goals, or reasonable efforts as required in N.J.A.C. 17:13-4.2 (12A:10-4.2), must be met by any contractor receiving an award.

2-4. (No Change.)

12A:10-4.2 (17:13-4.2) Good faith efforts of bidders; requirements

(a) The following actions shall be taken by a bidder in establishing a good faith effort to solicit and award subcontracts to eligible small businesses, minority businesses or female businesses, as established in the RFP:

1. (No Change.)

2. The bidder shall request a listing of small, minority or female businesses from the [State contracting agency] Commerce Commission if none are known to the bidder;

3-5 (No Change.)

(b) (No Change.)

12A:10-4.3 (17:13-4.3) (No Change.)

12A:10-5.1 (17:13-5.1) Planning

(a) No later than 60 calendar days before the start of each fiscal year, each State contracting agency shall submit to the [Commissioner] Secretary of the [Department of Commerce] Commerce Commission a plan for the coming fiscal year to comply with the set-aside program established by these rules. The [Department of Commerce] Commerce Commission will assist any State contracting agency in the development of its plan, upon request.

1. (No Change.)

i-vi (No Change.)

vii. In addition to the requirements in i through vi

above, the Division of Purchase and Property shall identify those multi-source term contracts included in the Cooperative Purchasing Program and indicate which of the multi-source contracts will be set-aside in their entirety, [entirely] and which will contain select line items set aside for small businesses, minority businesses or female businesses.

2. (No Change.)

i. Each State department served by the Division of Purchase and Property shall provide the [Department of Commerce] Commerce Commission with a list of those products and services typically purchased pursuant to its delegated purchasing authority, or with a list of those products and services purchased during the preceding fiscal year under that authority.

3-5 (No Change.)

(b) The [Department of Commerce] Commerce Commission shall review the plan to determine whether it is reasonably designed to achieve the State contracting agency's goal of awarding 15 percent of its total contracting dollars to small businesses, seven percent of its total contracting dollars to minority

businesses and three percent of its total contracting dollars to female businesses.

12A:10-5.2 (17:13-5.2) Reporting requirements

(a) Within 30 calendar days of the end of each State contracting agency's fiscal quarters, the agency shall file with the [Department of Commerce] Commerce Commission a report containing the following information prescribed by the [Department] Commerce Commission:

1-4 (No Change.)

(b) Within 90 calendar days of the close of each State contracting agency's fiscal year, the agency shall file with the [Department of Commerce] Commerce Commission, in a format prescribed by the [Department] Commerce Commission, an analysis of actual contracting dollars paid to all contractors and actual contracting dollars paid to small businesses, minority businesses and female businesses, pursuant to set-aside contracts and subcontracts.

(c) All reports required by this subchapter shall be considered public records for the purposes of N.J.S.A.

47:1A-1 et seq. and shall be retained as part of the permanent records of the State contracting agency and the [Department of Commerce] Commerce Commission.

12A:10-5.3 (17:13-5.3) Annual review

The [Commissioner] Secretary of the [Department of Commerce] Commerce Commission and the Treasurer of the State of New Jersey shall undertake an annual review of the operation and report to the Governor on the need for continuation or modification of the small, minority and female business set-aside programs contained in this chapter. This report shall be based upon the reports submitted to the [Department] Commerce Commission and any other information deemed appropriate. The report will include performance data on compliance and deficiencies for each contracting agency and be publicly distributed as deemed appropriate.